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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

13 LISA ANN SAUNDERS,) 3:07-cv-00405-HDM-VPC
14 Plaintiff,)
15 vs.) ORDER
16 MICHAEL J. ASTRUE,)
17 Defendant.)

The court has considered the report and recommendation of the United States Magistrate Judge (#17) filed on October 6, 2008, in which the magistrate judge recommends that this court enter an order denying plaintiff's motion to remand (#13) and granting defendant's cross-motion to affirm (#14). Plaintiff filed objections to the report and recommendation (#18), and the defendant filed a response (#19).

Plaintiff has alleged in part that the Administrative Law
Judge ("ALJ") "failed to obtain a valid waiver of her right to be
represented and that error prejudiced her because the ALJ failed to

1 obtain relevant medical records." (Pl. Obj. 2). The plaintiff is
2 currently represented by counsel and has been since at least
3 September 7, 2007, when she filed her complaint and motion to
4 proceed *in forma pauperis*. Neither this court nor the magistrate
5 judge has been provided with the plaintiff's records for the period
6 between June 2005 and June 2006. "Lack of counsel does not affect
7 the validity of the hearing and hence warrant remand, unless the
8 claimant can demonstrate prejudice or unfairness in the
9 administrative proceedings." *Vidal v. Harris*, 637 F.2d 710, 713
10 (9th Cir. 1991). Because the alleged prejudice was the ALJ's
11 failure to obtain and consider certain of plaintiff's treatment
12 records, plaintiff has a burden to make at least some showing that
13 the missing records would have been relevant to the ALJ's decision.
14 Having failed to do so, the plaintiff has not shown any prejudice
15 resulting from the ALJ's alleged failure to obtain a valid waiver
16 of counsel.

17 The court has considered the pleadings and memoranda of the
18 parties and other relevant matters of record and has made a review
19 and determination in accordance with the requirements of 28 U.S.C.
20 § 636 and applicable case law, and good cause appearing, the court
21 hereby ADOPTS AND ACCEPTS the report and recommendation of the
22 United States Magistrate Judge (#17). Accordingly, the plaintiff's
23 motion for remand (#13) is denied, and the defendant's cross-motion
24 for affirmation (#14) is granted.

25 DATED: This 14th day of November, 2008.

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28 UNITED STATES DISTRICT JUDGE